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6 UNITED STATES DISTRICT COURT
7 DISTRICT OF NEVADA

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9 PERCY LAVAE BACON,

10 Plaintiff,

11 v.

12 JAMES COX et al.,

13 Defendants.

Case No. 2:17-cv-01744-RFB-GWF

ORDER

14 **I. DISCUSSION**

15 Plaintiff is a prisoner proceeding *pro se*. Plaintiff has submitted a civil rights
16 complaint pursuant to 42 U.S.C. § 1983 and two applications to proceed *in forma*
17 *pauperis*. (ECF No. 1, 1-1, 3). However, on at least three (3) occasions, this Court and
18 the Ninth Circuit Court of Appeals have dismissed civil actions commenced by Plaintiff
19 while in detention as frivolous or for failure to state a claim upon which any relief may be
20 granted.¹

21 Pursuant to 28 U.S.C. § 1915(g), “if [a] prisoner has, on 3 or more prior occasions,
22 while incarcerated or detained in any facility, brought an action or appeal in a court of the
23 United States that was dismissed on the grounds that it is frivolous, malicious, or fails to
24 state a claim upon which relief may be granted,” he may not proceed *in forma pauperis*
25 and, instead, must pay the full \$400.00 filing fee in advance unless he is “under imminent

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27 ¹ See *Bacon v. Laswell*, 2:09-cv-02058-PMP-PAL (district court dismissed case for failure
28 to state a claim and appellate court dismissed appeal as frivolous); *Bacon v. State Of Nevada*, 2:10-cv-01451-KJD-LRL (appellate court dismissed appeal as frivolous). The Court takes judicial notice of its prior records in the above matters.

1 danger of serious physical injury.” 28 U.S.C. § 1915(g).

2 Plaintiff submitted his complaint on June 23, 2017. (ECF No. 1-1). In the
3 complaint, Plaintiff sues various prison officials for events that took place in 2015 when
4 prison officials disciplined Plaintiff for refusing to pick up his legal mail during an excessive
5 heat warning. (See *generally* ECF No. 1-1). The Court finds that these allegations fail to
6 plausibly allege that Plaintiff is in imminent danger of serious physical injury. See
7 *Andrews v. Cervantes*, 493 F.3d 1047, 1055-56 (9th Cir. 2007) (holding that the exception
8 to § 1915(g) applies if the complaint makes a plausible allegation that the prisoner faced
9 an ongoing danger of serious physical injury at the time of filing). As such, Plaintiff must
10 pre-pay the \$400.00 filing fee in full.

11 **II. CONCLUSION**

12 For the foregoing reasons, IT IS ORDERED that Plaintiff’s applications to proceed
13 *in forma pauperis* (ECF No. 1, 3) are denied.

14 IT IS FURTHER ORDERED that this action will be dismissed without prejudice
15 unless Plaintiff pays the \$400.00 filing fee in full within thirty (30) days of entry of this
16 order.

17 IT IS FURTHER ORDERED that the Clerk of the Court shall send Plaintiff two copies
18 of this order. Plaintiff shall make the necessary arrangements to have one copy of this
19 order attached to the check paying the filing fee.

20 IT IS FURTHER ORDERED that the Clerk of the Court shall retain the complaint
21 (ECF No. 1-1).

22 IT IS FURTHER ORDERED that the motion to extend prison copy work limit (ECF
23 No. 2) is denied, without prejudice, at this time.

24 DATED this 24th day of January, 2018.

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27 RICHARD F. BOULWARE, II
28 UNITED STATES DISTRICT JUDGE